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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/534,071	03/24/2000	Stephen Pacetti	1225.001US1	2171
24201	7590	03/13/2006	EXAMINER	
FULWIDER PATTON 6060 CENTER DRIVE 10TH FLOOR LOS ANGELES, CA 90045			BUI, VY Q	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/534,071	Applicant(s) PACETTI ET AL.	
	Examiner Vy Q. Bui	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-21, 38-44, 53 and 55-60 is/are pending in the application.
- 4a) Of the above claim(s) 8-12, 14-16, 18, 39 and 54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 13, 19-21, 38 and 40-44, 53, 55-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-2, 5-7, 13, 19-21, 38, 43, 56-57 and 60 are rejected under 35 U.S.C. 102(e) as being anticipated by FARIABI (6,419,693).

As to claims 1-2, 5-7, 13, 19-21, 56-57 and 60, FARIABI (Fig. 5-7; abstract, lines 5-10; claim 1) discloses a radiopaque stent 50 of Cobalt-Nickel-Chrome (Co-Ni-Cr) alloy comprising a radiopaque material such as tungsten (W). Stent 50 comprises tubular main body defining undulating pattern with holes. Stent 50 is carried by catheter 51 to be deployed in blood vessel 57 and expandable by balloon 54 (Fig. 6). Notice that because two devices having identical structural limitations must be the same and behave exactly in the same way, therefore Fariabi-'693 stent, which has all structural limitations as recited in the claims must behave the same as the stent of the invention and must be visible but does not obscure an underlying vessel morphology when subject to imaging.

As to claim 43, FARIABI (claim 1) discloses a stent of 5%-35% Cr, 0%-20% W and 2%-40% Ni.

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As to claim 38, the radiopaque material tungsten (W) in FARIABI stent has an atomic number of 74.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helmus-US 20020032477 A1

As to claims 1, 3-4, 55 and 58, Helmus- US 20020032477 A1 (section 0039) discloses a stent of cobalt-chromium alloy, an expanded diameter up to 10mm, and a wall thickness up to 0.05 mm (about 0.002 inch) as recited in the claims, except for a visibility of the stent without obscuring the vessel as recited in claim 1. However, it is well known that the thicker wall of a stent the more visible of the stent when subjected to imaging. It would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the wall thickness of Helmus stent so that the stent become visible without obscuring a blood vessel when subjected to imaging.

As to claims 40-42, 44, the alloy as recited in the claim is identified as a well-known L605 alloy, which has been known to be used to make a radiopaque stent. It would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the wall thickness of a stent made of a L605 alloy so that the stent become visible without obscuring a blood vessel when subjected to imaging.

As to claims 53 and 59, Helmus- US 20020032477 A1 (section 0039) discloses substantially the claimed invention, except for the elongation percent. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the material of the Helmus stent to have the claimed elongation, as modifying an elongation

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percentage of an alloy by changing percentage of different components in the alloy is well known.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



03/06/2006

Vy Q. Bui
Primary Examiner
Art Unit 3731